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No. 83-897

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

LOURDES BLANCO STONEHILL AND PACITA C. BROOKS,
Petitioners,

v.

UNITED STATES OF AMERICA

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

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REPLY MEMORANDUM FOR THE PETITIONERS

BERT B. RAND*
HANS A. NATHAN
TRAMMELL, RAND, NATHAN & LINCOLN, P.C.
1000 Potomac Street, Suite 302
Washington, D.C. 20007
Telephone: (202) 965-6300
*Counsel of Record

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REPLY MEMORANDUM FOR THE PETITIONERS

The Solicitor General in his Opposition concedes that the petitioners herein, alien non-resident wives of two U.S. citizens living and earning their livings in Manila, Republic of the Philippines:

1. had an immediate vested half-interest in the properties levied upon by the Government, (Solicitor General's Opposition, p. 4).

2. were not subject to U.S. tax, but instead under U.S. law half of the income of the husbands was exempt from U.S. tax because it was deemed earned by and became the property of their alien non-resident wives. (Solicitor General's Opposition, p. 2).

Where, then, did lower Courts seek the authority for the proposition that the property of these foreign persons

were property interests held by the delinquent taxpayer husbands or that the wives were liable transferees? The Solicitor General claims that the lower Courts relied upon Philippine law, the applicable local law, and that they did so correctly. To this claim petitioners take exception in every particular.

The District Court's rationale is difficult to pin down since that Court cited the applicable Philippine statute adopted in 1950, then relied upon and cited Philippine cases which arose under an earlier statute. (420 Fed-.Supp. 46, at p. 64).

The Court of Appeals also cites the Philippine statute as follows, "Article 161 of the Philippine Code provides: 'The conjugal partnership shall be liable for (1) all debts and obligations contracted by the husband for the benefit of the conjugal partnership . . .' " (702 F.2d 1288, at p. 1297-98), and then specifically agrees that the U.S. taxes of the husbands were "non-beneficial taxes" to the wives. (702 F.2d 1288, at p. 1298).

Neither Court cited any Philippine cases as authority for the proposition that U.S. taxes incurred by U.S. citizens on Philippine income are obligations contracted by the U.S. citizens for the benefit of their Philippine community including their Philippine wives. We are aware of no such case authority.

The real rationale of the Court of Appeals, and of the Solicitor General lies in their reliance on a case arising under California law, *Babb* v. *Schmidt*, 496 F.2d 957 (9th Cir., 1974). This California position is unique, as far as we can determine, and rests on a different statute than has been promulgated in the Republic of the Philippines. Certainly, there is not even the claim that this is Philippine law. It is noted that the District Court pointed out

that the closest community property law in the United States was the law of the State of Washington, not California. (420 Fed. Supp. 46, at p. 64).

We submit that it is obvious that neither the District Court nor the Court of Appeals based their decision with respect to these petitioners and the possible confiscation of their property on applicable Philippine law. Nothing more than the following is required to establish this fact, despite any lip service to the contrary:

1. The Philippine local law expressly requires proof that an obligation of a husband was *contracted for the benefit of the marital community* in order to give a creditor a right against his wife's community property.

2. The leading Philippine Supreme Court case, cited by the Court of Appeals for the Ninth Circuit, *Luzon Surety Co.* v. *de Garcia*, 30 S.C.R.A. 111 (Phil. 1969), specifically interprets that local statute to require that "there must be the *requisite showing* then of some *advantage* which *clearly* accrued to the welfare of the spouse." (See pp. 14, 15, Petition for Writ of Certiorari, quoting text). (Emphasis supplied).

3. The Court of Appeals for the Ninth Circuit declared the U.S. taxes "non-beneficial" to the Philippine community (while at the same time affirming the District Court on the ground that the wives cannot have the benefit of the husbands' earnings if they avoid the non-beneficial taxes. 702 F.2d, 1288, at p. 1298).

We submit that on the entire record the decisions of the lower Courts have been made on the sole ground, as enunciated during the tax years increased the conjugal property, and the wives shared in that increase" (420 Fed. Supp. 46, at p. 64). Whether these decisions were based on some version of patriotism or subjective concern

for the tax revenues or pure emotion, they were not based on law, but they (i) extended the property interests held by the delinquent taxpayers beyond the law; (ii) violated due process (U.S. Constitution, Amendment V) by ". . . gratuitous confiscation of one person's property interests in order to satisfy another person's tax indebtedness . . . ." (*U.S.* v. *Rodgers, et al.*, 103 S.Ct. 2152, at 2144 (1983)); (iii) sanctioned unconstitutional extraterritorial taxation; and (iv) established a precedent which may severely prejudice international comity, particularly in tax matters and in the respect and dignity given to the treatment of our legal precedents by foreign countries.

It is therefore respectfully submitted that the Petition for a Writ of Certiorari should be granted.

TRAMMELL, RAND, NATHAN & LINCOLN, P.C.

by Bert B. Rand
BERT B. RAND
Counsel of Record for Petitioners

FEBRUARY 1984

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

UNITED STATES OF AMERICA,

Respondent,

v.

HARRY S. STONEHILL,
ROBERT P. BROOKS
LOURDES BLANCO STONEHILL,
PACITA C. BROOKS, et al

Petitioners.

CERTIFICATE OF SERVICE OF REPLY MEMORANDUM
IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI
BY LOURDES BLANCO STONEHILL AND PACITA C. BROOKS
AND BY HARRY S. STONEHILL AND ROBERT P. BROOKS
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

I, BERT B. RAND, a member of the Bar of the Supreme Court of the United States, and counsel of record for Petitioners Lourdes Blanco Stonehill and Pacita C. Brooks, and for and on behalf of RIDGWAY K. FOLEY, JR., P.C., a member of the Bar of the Supreme Court of the United States, and counsel of record for the Petitioners Harry S. Stonehill and Robert P. Brooks, hereby certify pursuant to Rule 28.5, Supreme Court Rules, that I served three certified true copies of each of the Reply Memorandum in Support of the Petition for Writ of Certiorari on behalf of the above named Petitioners, on the 14th day of February, 1984 by depositing said copies in the United States Post Office, Washington, D.C., with first-class postage prepaid,

to the following persons at the following last known addresses thereof, these persons being counsel for all parties represented in the proceedings below:

Kristina E. Harrigan
Attorney, Tax Division
Department of Justice
Washington, D.C. 20530
Telephone: (202) 633-3361

Stephen St. Trott
United States Attorney
Central District of California
312 North Spring Street
Los Angeles, California 90012
Telephone: (213) 688-2434

Joseph P. Russoniello
United States Attorney
Northern District of California
450 Golden Gate Avenue, 16th Floor
San Francisco, California 94102
Telephone: (415) 556-1126

Wallace M. Weatherwax
United States Attorney
Room C 242 PJKK Federal Building
Box 50183
300 Ala Moana Boulevard
Honolulu, Hawaii 96850

Attorneys for the United States of America

William W. Saunders
Chun, Kerr & Dodd
2299 Kuhio Avenue
Honolulu, Hawaii 96815
Telephone: (808) 531-6575

Attorneys for Ben Gromet, William W. Saunders, Tower Development Corp., and Meriwether Development Corp.

Joseph D. Mullender, Jr.
Ball, Hunt, Hart, Brown & Baerwitz
120 Linden Avenue
Long Beach, California 90802
Telephone: (213) 435-5631

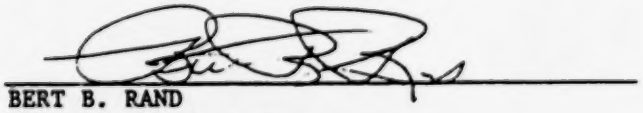
Attorneys for Intervenors-Appellants
Trammell, Rand, Nathan & Lincoln

Ridgway K. Foley, Jr., P.C.
Schwabe, Williamson, Wyatt,
Moore & Roberts,
1200 Standard Plaza
Portland, Oregon 97204
Telephone: (503) 222-9981

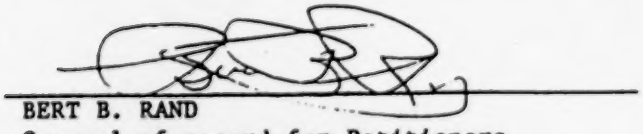
Attorneys for Harry S. Stonehill &
Robert P. Brooks

In addition, pursuant to Rule 28.4, Supreme Court Rules, I also served the Solicitor General by depositing three certified true copies of each of the aforementioned Reply Memorandum on behalf of the aforenamed Petitioners, in the United States Post Office, Washington, D.C., on the 14th day of February, 1984, duly addressed to:

Rex E. Lee, Office of the Solicitor General,
Department of Justice, Room 5514
10th & Pennsylvania Avenue, N.W.
Washington, D.C. 20543
Telephone: (202) 252-3000



BERT B. RAND
Attorney in Fact for
Ridgway K. Foley, Jr., P.C.
Counsel of record for Petitioners
Harry S. Stonehill and Robert P. Brooks



BERT B. RAND
Counsel of record for Petitioners
Lourdes Blanco Stonehill and
Pacita C. Brooks

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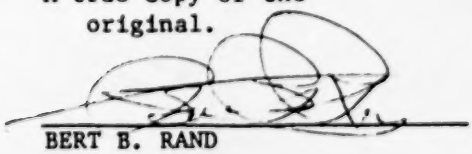

BERT B. RAND